

# **WORKERS' COMPENSATION INDUSTRIAL COUNCIL/PUBLIC MEETING**

**August 26, 2021**

Minutes of the meeting of the Workers' Compensation Industrial Council/Public Meeting, held virtually via Zoom and in person, on Thursday, August 26, 2021, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 900 Pennsylvania Avenue, 10<sup>th</sup> Floor Conference Room, Charleston, West Virginia.

Industrial Council Members Present:

Anna Dailey – Chairperson – In Person  
Bengy Swanson – Vice Chairperson – In Person  
Kim Shin – Secretary – via Zoom  
Patrick Smith – via Zoom  
Jeff Mullins – In Person  
James A. Dodrill, Insurance Commissioner/Nonvoting Member – In Person

## **1. Call to Order**

Chairperson Dailey called the meeting to order at 1:00 p.m.

## **2. Approval of Minutes**

Chairperson Dailey asked for a motion to approve the May 20, 2021 minutes.

Patrick Smith made the motion to approve the May 20, 2021 minutes. The motion was seconded by Kim Shin and passed unanimously.

## **3. Office of Judges' Report**

Chief Administrative Law Judge Ted White presented the Offices of Judges' Report. Chief Judge White briefly commented on Office of Judges personnel issues caused by retirements and the pending closure of the office in 2022. Chairperson Anna Dailey advised that these matters are generally not within the purview of the Industrial Council. Commissioner Dodrill advised that he is working with the Assistant Commissioner of Operations, Debbie Hughes, to address personnel issues.

#### **4. Board of Review Report**

Nick Casey, Chairperson of the Board of Review, presented the Board of Review Report. Mr. Casey provided an update to the Council regarding the status of necessary changes caused by the passage of S.B. 275 (2021), and the reorganization of the workers' compensation claims litigation system. Commissioner Dodrill commented that there may be legislative "cleanup" needed for the transition. There were no questions after the presentation.

#### **5. General Public Comments**

There were no speakers and no comments.

#### **6. Public Hearing**

Erin Hunter, OIC Deputy Commissioner/General Counsel discussed amendments to Title 85, Series 8 *Workers' Compensation Policies, Coverage Issues and Related Topics*. An update to this Rule is necessary due to legislation that passed during the 2021 legislative session, S.B. 272. This bill set forth a statutory definition of independent contractor that was distinct from the definition currently provided for in Rule 8. The Industrial Council was asked to consider the updates proposed to Rule 8, so that Rule 8 would not conflict with the new statute. Ms. Hunter advised that the Offices of the Insurance Commissioner (OIC) published a public comment notice with the Secretary of State's office and on the OIC website on July 9, 2021. The written public comment period ended at 5:00 p.m. on August 10, 2021. No written comments were received. The OIC also published a notice of this public hearing with the Secretary of State and on its website. Ms. Hunter asked if anyone was present for the public hearing that would like to make a comment regarding the proposed updates to Rule 8. There were no comments on the Rule during the public hearing.

Chairperson Daily closed the public hearing on the Rule and asked for a motion to approve the Rule for final filing. Patrick Smith made the motion. The motion was seconded by Bengy Swanson and passed unanimously.

#### **7. Old Business**

There was no old business to discuss.

## **8. New Business**

Ms. Hunter discussed an update on the Board of Review Reorganization/Expansion. Commissioner Dodrill advised that the proposed new space for the Board of Review likely will not be available until 2023. The new space is in Building 4 at the Capitol Complex. For now, additional space has been acquired in the Litton Building. Debbie Hughes was made available for questions regarding new positions or new class specs that are being created for the Board of Review. It was mentioned that Attorney Beth Suter, of the Board of Review, has been working on updating the BOR procedural rule.

Ms. Hunter stated that at least eight (8) workers' compensation rules have been identified that will need to be updated due to the changes with the Board of Review and Office of Judges.

Ms. Hunter asked the Council to consider an update to Title 85, Series 13, which is the Industrial Council's procedural rule. The rule needs updated to permit virtual participation, as well as to reflect other statutory changes regarding public meeting notice. The Industrial Council agreed the rule should be updated.

## **9. Next Meeting**

The next meeting is scheduled for Thursday, November 18, 2021 at 1:00 p.m.

## **10. Executive Session**

Chairperson Dailey: The next item on the agenda is an Executive Session to discuss confidential matters related to self-insured employers.

These matters involve discussion of confidential information that meets exceptions under the *West Virginia Public Meetings Act*, and also involves matters that are exempted from disclosure under the *West Virginia Freedom of Information Act*. Therefore, it is appropriate that the discussions take place in Executive Session under the provisions of West Virginia Code §6-9A-4.

If there is any action taken regarding these specific matters it will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Bengy Swanson made the motion to go into Executive Session. The motion was seconded by Jeff Mullins and passed unanimously.

The Industrial Council went into Executive Session to discuss self-insured matters.

Angela Shepherd, Director, Workers' Compensation Self-Insurance, presented the self-insured matters.

Chairperson Dailey called the Industrial Council meeting back to order for the regular public session.

Chairperson Dailey entertained a motion to approve the list of self-insured renewals that have been presented to the Council.

Jeff Mullins moved to accept the motion to approve the list. The motion was seconded by Patrick Smith and passed unanimously.

## **11. Adjourn**

There being no further business, Chairperson Dailey asked for a motion to adjourn. Jeff Mullins made the motion to adjourn the meeting. The motion was seconded by Bengy Swanson and passed unanimously.